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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1929

## No. 237

STATE OF OHIO EX REL. E. H. BRYANT, APPELLANT,

*vs.*

AKRON METROPOLITAN PARK DISTRICT FOR SUMMIT COUNTY, F. A. SEIBERLING, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED JULY 12, 1929

(34,368)

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APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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## IN SUPREME COURT OF OHIO

No. 21,324

STATE OF OHIO ex Rel. E. H. BRYANT, Appellant,

v.

AKRON METROPOLITAN PARK DISTRICT FOR SUMMIT COUNTY, F. A. Seiberling, Edward D. Eckroad, Maude I. Milar and Jacob Mong, County Auditor, Appellees

PETITION FOR APPEAL—Filed June 13, 1929

To the Honorable Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio:

The petition of State of Ohio ex rel. E. H. Bryant, respectfully shows: That heretofore, towit, upon the 27th day of March, 1929, and upon the 5th day of June, 1929, there was rendered by this Court in the error proceedings entitled and bearing the docket number as above, a judgment affirming the judgments of the lower courts in a taxpayer's suit commenced in the Court of Common Pleas of Summit County, by the State of Ohio, ex rel. E. H. Bryant, against the Akron Metropolitan Park District for Summit County, F. A. Seiberling Edward D. Eckroad Maude I. Milar and Jacob Mong, County Auditor, for injunction against the levying of taxes and the completing of contracts by said Park District Commissioners, in which proceeding and in the error proceedings for the review thereof in the Court of Appeals of Summit County, and in this court, there was drawn in question the validity of the "Park District Act" of the State of Ohio, General Code Sections 2976-1 to 2976-10c, inclusive, (107 Ohio Laws, pages 65 to 69), and the amendments thereto, Sections 2976-1 to 2976-7, and the supplemental sections, 2976-10d to 2976-10i (108 Ohio Laws, Part 2, pages 1097 to 1100), on the ground of their being repugnant to the provisions of Article XIV, Section 1 of the amendments to, and of Article IV, Sections 2 and 4, of the Constitution of the United States in respect to the breach of the privileges and immunities and other rights of citizens, and of the guaranteed form of State gov-
[fol. 3] ernment, by the vesting of the taxing and other leg-

islative powers of the State of Ohio in nonelective officials of that State; and there was further drawn in question the validity of Section 2 of Article IV of the Constitution of Ohio on the ground of its being repugnant to the provisions of Article XIV, Section 1 of the amendments to the Constitution of the United States in regard to the denial of the equal protection of the laws by the Ohio Supreme Court's rendering of minority judgments on constitutional questions, and the decision in each of said matters was in favor of the validity of said statutory and constitutional provisions of the State of Ohio,—there being manifest error in the premises greatly to the damage of this appellant in refusing such injunction.

Appellant further shows that the said judgment of the Supreme Court of Ohio was and is a final judgment of the highest court of the State of Ohio in which a decision in said suit could or can be had; that a federal question was made in said case, towit, as hereinbefore set out; and that said judgment of said Supreme Court of Ohio was and is repugnant to, and in conflict with, the Constitution of the United States to which the said judgment of the Supreme Court of Ohio was contrary, albeit a decision of the said federal question was necessary to the judgment rendered; all of which more fully appears in the Assignment of Errors filed herewith.

Wherefore, said appellant presents herewith an exemplified transcript of the record of the Supreme Court of Ohio in said case and prays that an appeal from said Supreme Court be allowed; that citation be granted and signed; that the bond herewith presented be approved as security for costs.

State of Ohio ex Rel. E. H. Bryant, by Frederick A. Henry for George D. Hile and Snyder, Henry, Thomsen, Ford & Seagrave, Williamson Bldg., Cleveland, Ohio, Attorneys for Appellant.

[fol. 4] The appeal as prayed for in the foregoing petition is hereby allowed and the bond for security for costs tendered therewith is hereby approved.

Dated at Columbus, Ohio, this 13th day of June, 1929.

Carrington T. Marshall, Chief Justice of the Supreme Court of the State of Ohio.

[fol. 5] [File endorsement omitted.]

[fol. 6] IN SUPREME COURT OF OHIO

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 13, 1929

The appellant in the above entitled suit having prayed for the allowance of an appeal in this case to the Supreme Court of the United States from the judgment and order or orders made and entered in the above entitled suit by the Supreme Court of the State of Ohio on the 27th day of March, 1929, and on the 5th day of June, 1929, and from each and every part thereof, and having present on file their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statute and to the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered, That an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Ohio in the above entitled cause as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Ohio shall prepare and certify a transcript of the record, proceedings and judgment (or decree) in this case and transmit the same to the Supreme Court of the United States, and he shall have the same in said Court within thirty days from this date.

And it is further ordered that the surety for costs on appeal be fixed in the sum of Five Hundred Dollars ($500.00).

Dated this 13th day of June, 1929.

Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio.

[fol. 7] [File endorsement omitted.]

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[fol. 8] IN SUPREME COURT OF OHIO

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 13, 1929

The appellant, State of Ohio, ex rel. E. H. Bryant, files this assignment of errors to be reviewed by the Supreme

Court of the United States on appeal from the Supreme Court of Ohio; said Supreme Court of Ohio having erred in the above entitled case in finding and deciding as follows:

1. That, "it appearing that five members of this Court (Robinson, Jones, Matthias, Day and Allen, JJ.) are of the opinion that Sections 2976-4, 2976-5, 2976-10, 2976-10c, 2976-10e, 2976-10i of the General Code of Ohio are unconstitutional; that two members (Marshall, C. J., and Kinkade, J.) are of the opinion that said sections are not repugnant to any constitutional provision; that the Court of Appeals held the said statutes constitutional and that in such cases the Constitution of Ohio requires a concurrence of all but one of the members of the Supreme Court to declare a law unconstitutional, it is ordered and adjudged that the judgment of the said Court of Appeals be and the same hereby is affirmed."

2. That said provision of Article IV, Section 2 of the Constitution of Ohio, directing that "No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the Court of Appeals declaring a law unconstitutional and void," does not violate Article XIV, Section 1 of the Constitution of the United States, nor operate in said State of Ohio to "deny to any person within its jurisdiction the equal protection of the laws."

[fol. 9] 3. That the "Park District Act" of the State of Ohio, General Code Sections 2976-1, to 2976-10c, inclusive, (107 Ohio Laws, pages 65-69) and the amendments thereto, Sections 2976-1 to 2976-7, and the supplemental Sections 2976-10d to 2976-10i (108 Ohio Laws, Part 2, pages 1097-1100), in every part thereof, is a valid law, and that none of said sections 2976-4, 2976-5, 2976-9, 2976-10, 2976-10c, 2976-10e, and 2976-10i, is unconstitutional; that neither said act nor any of said sections violates Article XIV, Section 1 of the amendments to the Constitution of the United States, nor operates in said State of Ohio to abridge the privileges or immunities of citizens of the United States, or of the several states, nor deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws: and that neither said Act nor any of said sections, by

delegating legislative power or by vesting the taxing or other legislative power in non-elective officials, violates Article IV, Sections 2 and 4 of the Constitution of the United States, nor conflicts with the guaranty of a republican form of government for said state.

Wherefore, said appellant prays that the foregoing assignment of errors be allowed by this court, and that the judgment and order or orders of this court may, by reason thereof, be reversed by the Supreme Court of the United States.

George D. Hile and Snyder, Henry, Thomsen, Ford & Seagrave, by Frederick A. Henry, Attorneys and of Counsel for Appellant.

Allowed this 13th day of June, 1929.

Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio.

[fols. 10 & 11] [File endorsement omitted.]

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[fols. 12-17] Citation in usual form showing service on Oscar A. Hunsicker et al. Filed July 3, 1929. Omitted in printing.

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[fol. 18] IN SUPREME COURT OF OHIO

[Title omitted]

DOCKET AND JOURNAL ENTRIES

Transcript of Docket Entries

Memoranda of Pleadings, etc., filed, writs issued, judgments decrees and orders.

1928.

Aug. 2. Petition in error and præcipe for summons filed. Transcript of docket and Journal entries of Court of Appeals and Common Pleas Court, and original papers filed. Summons issued for defendants in error to sheriff of Summit County, Ohio, returnable August 13, 1928, Sent by registered mail., P. O. Receipts.

1928

Aug. 14. Summons returned endorsed as follows: "Sheriff return received this writ August 3, 1928 at 3:20 o'clock P. M. and on August 6, 1928 I served the same by personally handing a true and certified copy thereof with all the endorsements thereon to F. A. Seiberling, Edward D. Eckroad, Akron Metropolitan Park by Edward D. Eckroad as chairman. Then after due and diligent search I am unable to find the within named Maude I. Milar and Jacob Mong in my County. Jacob Bollinger, Sheriff, R. E. Martin, Deputy Sheriff.

Aug. 31. Papers sent to Gates Legal Publishing Co. by express.

Sept. 1. At Chambers—Time for filing printed record and printed brief of plaintiff in error extended until September 15, 1928. R. H. Day, J. Journal #31 Page 437.

Sept. 12. Papers returned by Gates Legal Publishing Co. Printed Record filed 9/12/28 P. S. Filed

Sept. 19. Plaintiffs printed briefs (same as 21336) filed 9/21/28 P. S. Filed.

Nov. 30. Deft's Printed Briefs (same as 21336) filed 12/1/28 P. S. Filed.

Dec. 11. Printed reply briefs of plaintiff (same as 21336) filed.

" 14. Proof of Service of plaintiff's reply brief filed.

" 20. Printed briefs, amicus curiæ by George C. Hansen, (same as 21336) filed, and sent to Court 12/26/28 P. S. Filed.

1929.

Feb. 22. Printed briefs of Henderson, Quail, McGraw and Morgan, Amicus curiaw filed (same as #21336) 2/26/29 P. S. Filed.

Mar. 27. Reargument Judgment Affirmed, Journal #31 Page 614.

Apr. 3. Mandate Issued.
Original Papers sent to Clerk.

Apr. 26. Application for rehearing filed ans sent to Court.

May 25. Motion by plaintiff to vacate judgment and for judgment for plaintiff in error, briefs on motion, notice and proof of service filed.

1929

Jun. 5. Motion by plaintiff to vacate judgment and for judgment for plaintiff in error, Overruled, Journal #31.—683.

June 13. Petition for allowance of an appeal to Supreme Court of United States filed.

Order Allowing Appeal filed. Assignment of errors filed.

Bond in sum of $500.00 signed by E. H. Bryant as principal, Royal Indemnity So. as Surety filed and approved.

[fols. 19-21b] Transcript of Journal Entries

1928.

Sept. 1. Upon application of plaintiff in error, and for good cause shown it is ordered that the time for filing printed record and printed brief of plaintiff in error, herein be, and the same hereby is extended until September 15, 1928.

1929.

Mar. 27. This cause came on to be hear- upon the transcript of the record of the Court of Appeals of Summit County and was argued by counsel. On Consideration whereof, it appearing that five members of this Court, (Robinson, Jones, Matthias, Day and Allen, JJ) are of the opinion that Sections 2976-4, 2976-5, 2976-10, 2976-10c, 2976-10e, and 2976-10i of the General Code of Ohio are unconstitutional that two members (Marshall, C. J. and Kinkade, J.) are of the opinion that said sections are not repugnant to any constitutional provision; that the Court of Appeals held the said statutes constitutional, and that in such cases the Constitution of Ohio requires a concurrence of all but one of the members of the Supreme Court to declare a law unconstitutional, it is ordered and adjudged that the judgment of the said Court of Appeals be and the same hereby is affirmed, and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

1929 It is further ordered that the defendants in error recover from the plaintiff in error their costs herein expended taxed at $——.

Ordered, That a special mandate be sent to the Court of Common Pleas of Summit County to carry this Judgment into execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County, "for entry."

June 5. It is ordered by the Court that this motion be and the same is hereby overruled.

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[fol. 22] IN SUPREME COURT OF OHIO

[Title omitted]

PETITION IN ERROR—Filed Aug. 2, 1928

Plaintiff in error, in the above entitled cause, says that on the 24th day of May, 1928, that the Court of Appeals for the Ninth Judicial District of Ohio in an error proceedings then pending therein and prosecuted by this plaintiff in error thereto from a judgment of the Court of Common Pleas of Summit County, Ohio, rendered against this plaintiff in error and in favor of the defendants in error, which said Court of Appeals, on the aforesaid date, affirmed and rendered judgment against this plaintiff in error and in favor of the defendants in error.

That constitutional questions are involved in the above entitled action which authorizes the plaintiff in error to [fol. 23] prosecute this proceeding in error to this Court that he may have the proceeding of the Lower Courts reviewed.

That the original files and pleadings, together with a cerified copy of the docket and Journal Entries of the Lower Courts, are filed herewith and present the constitutional questions presented and decided adversely to plaintiff in error's contention.

Plaintiff in error therefore prays that said judgments of the Lower Court be reversed and that he be restored to all things and rights he has lost thereby.

Geo. D. Hile, Snyder, Henry, Thomsen, Ford & Seagrave, Attorneys for Plaintiff in Error.

Precipe

To the Clerk of Supreme Court:

Please issue summons in error for the defendants in error, returnable according to law.

Geo. D. Hile and Snyder, Henry, Thomsen, Ford & Seagrave, Attorneys for Plaintiff in Error.

Aug. 2, 1928. Summons issued. L. J. C.

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[fol. 24] In Court of Appeals of Summit County

No. 1414

Docket and Journal Entries

October 14, 1927.—Petition-in-Error, Transcript from Common Pleas Court and ten (10) original papers and Precipe filed.

October 14, 1927.—Summons in error issued to Sheriff of Summit County.

October 25, 1927.—Summons in error returned endorsed: I served the same Oct. 22, 1927, by personally handing a true and certified copy thereof with all the endorsements thereon to Edward D. Eckroad, Maude I. Milar, Jacob Mong, County Auditor, and Akron Metropolitan Park by Edward D. Eckroad, President. And after due and diligent search I am unable to find the within named F. A. Seiberling in my County. Jacob Bollinger, Sheriff. R. E. Martin, Deputy Sheriff.

November 12, 1927.—Motion to advance, acknowledgment of service of notice and Brief filed.

November 15, 1927.—October Term. This cause came on to be heard upon the motion of plaintiff to advance the same, and it appearing to the court that the issues made in said case by the pleadings are now before the Supreme Court for determination in another case pending therein, which has been argued and submitted, said motion to advance is overruled. Jl. 4-149.

January 9, 1928.—Motion to advance, acknowledgment of service of notice and brief filed.

[fol. 25] March 16, 1928—Brief (1) plaintiff in error filed.

April 13, 1928.—Brief (3) Board of Park Commissioners of The Akron Metropolitan Park District filed.

April 16, 1928.—October Term. It is ordered by the court here that this cause be and the same hereby is continued to the next term of this court.

May 24, 1928.—April Term. Judgment affirmed. Error from Common Pleas.

The said parties appeared by their Attorneys, and this cause came on to be heard upon the Petition in Error of the said State of Ohio, ex rel. E. H. Bryant, plaintiff in error herein, together with the original papers and pleadings and a duly certified Transcript of the orders and Judgment of the Court of Common pleas of Summit County, Ohio, filed therewith in the said cause, wherein State of Ohio, ex rel. E. H. Bryant, was plaintiff and Akron Metropolitan Park District for Summit County, F. A. Seiberling, Edward D. Eckroad, Maude I. Milar and Jacob Mong, County Auditor, were defendants, mentioned and referred to in said Petition in Error, and was argued by counsel: Upon consideration whereof the Court finds that there is no error manifest upon the face of the record in said orders and Judgment of said Court of Common Pleas.

It is thereupon Considered, Ordered and Adjudged by this Court, That the Judgment and proceedings of the said Court of Common Pleas, in said cause in favor of the said defendants in error, and against the said plaintiffs in error be, and the same are hereby in all things affirmed, there being, however, in the opinion of the Court, reasonable ground for this proceeding in error.

[fol. 26] It is further Considered and Ordered, That the plaintiff in error pay the costs of this proceeding in error, taxed at —, and in default thereof that execution issue therefor.

Ordered, That a special mandate be sent to the Court of Common Pleas of Summit County, to carry this Judgment into execution.

To all of which the plaintiff excepts. Jl. 4-, —.

May 25, 1928.—Precipe for Transcript to Supreme Court filed.

(Duly certified.)

IN COURT OF APPEALS OF SUMMIT COUNTY

PETITION IN ERROR—Filed Oct. 14, 1927

The plaintiff in error says on the 5th day of August at the April 1927 term of the Common Pleas Court of Summit County, Ohio, in Case No. 62487, on the Dockets of said Court in an action therein then pending wherein this plaintiff in error was plaintiff and the defendants in error were defendants, that the court under and upon the allegations of facts set forth in plaintiff's amended petition, which facts are admitted by defendant'se answer filed thereto, it was by said court considered, determined and adjudged that plaintiff's amended petition be dismissed, which the court did and entered judgment in favor of the defendants and against this plaintiff, to all of which plaintiff excepted.

That a transcript of the docket and journal entries thereof together with the original papers are filed herewith.

[fol. 27] The plaintiff in error says that there is error in said judgment and proceedings in this to-wit:

First. That judgment should have been rendered in favor of the plaintiff on the facts admitted by the pleadings.

Second. That said judgment is contrary to law.

Third. That the court erred in rendering judgment in favor of the defendants when it should have been rendered for the plaintiff.

Fourth. That said judgment is contrary to the law of the land, violating fundamental law of the land, that taxation and representation are inseparable.

Fifth. That said judgment denied the plaintiff in error of the protection of the constitutional provisions set forth in its petition.

Wherefore the plaintiff prays that the court reverse the judgment of the lower court herein rendered and that he be restored to all things lost thereby.

Geo. D. Hile, Attorney for Plaintiff in Error.

Precipe

To the Clerk:

Issue summons in error for the above named defendants in error. Endorse returnable according to law.

Geo. D. Hile, Attorney for Plaintiff in Error.

Issued Oct. 14, 1927.

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[fol. 28] In Common Pleas Court of Summit County

Docket and Journal Entries

December 29, 1926.—Petition, Affidavit and Precipe filed.

December 30, 1926.—Summons issued to the Sheriff of Summit County.

January 3, 1927, September Term.—It is ordered by the court here that this cause be and the same hereby is continued to the next term of this court.

January 4, 1927.—Summons returned endorsed: And on 31st Dec. 1926, I served the within named "Akron Metropolitan Park District" by H. S. Wagner, Treas., and Jacob Mong. Chris Weaver, Sheriff. H. Lesher, Deputy. And on Jan. 4th, 1927, Frank A. Seiberling and Edward D. Eckroad by personally handing to each of them a true and certified copy thereof with all the endorsements thereon. And on Jan. 4, 1927, I served the within named Maude I. Milar by leaving for her at her usual place of residence, a true and certified copy thereof with all the endorsements thereon. Jacob Bollinger, Sheriff. By C. Hixon, Deputy.

January 14, 1927.—Motion for security for costs and Brief filed.

January 25, 1927.—Motion for advancement and Brief filed.

January 25, 1927.—Answer filed.

January 28, 1927.—Undertaking for Costs filed.

[fol. 29] February 17, 1927, January Term.—Plaintiff, on his own motion, is given leave to file his amended petition, instanter. Jl. 128—571.

February 17, 1927.—Amended Petition filed.

March 2, 1927.—January Term. It appearing that an amended petition has been filed by the plaintiff, the de-

fendants, on their own application, are given permission to refile the answer heretofore filed by them in this action as an answer to the amended petition without the reverification thereof and without the doing of any formal act. Jl. 129—36.

April 4, 1927, January Term.—It is ordered by the court here that this cause be and the same hereby is continued to the next term of this court.

August 5, 1927, April Term.—This day this cause came on to be heard on the issues joined in the pleadings and admissions therein contained and was argued by counsel and submitted to the Court.

On consideration thereof the Court finds the issues in favor of the defendants and that the petition should be dismissed.

Now, therefore, it is the judgment of the Court that the restraining orders prayed for in the petition be, and they hereby are refused and the petition is hereby dismissed, at the costs of the relator. To all of which plaintiff excepts. Jl. 132—28.

(Duly certified.)

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[fol. 30] In Common Pleas Court of Summit County

Amended Petition—Filed Feb. 17, 1927

Having first obtained leave Plaintiff files this amended petition and says that he is one of the taxpayers of Summit County, Ohio, that he has no taxable property within the Township of Twinsburg, nor the Village of Hudson, that he brings this action as a taxpayer of said County for the benefit of said County, after having on the 16th day of December, 1926, made written demand upon Walter Booth, the Prosecuting Attorney for said County, that he institute this action and after his refusal to do same in writing. Plaintiff for his complaint and cause of action says, that Jacob Mong is the duly elected and qualified auditor for Summit County, Ohio, that the defendants Frank A. Seiberling, Edward D. Eckroad and Maude I. Milar constitute the Board of Park Commissioners for the Akron Metropolitan Park Districts, a defendant herein. That an ap-

plication for its establishment was filed in the Probate Court of Summit County, Ohio, on or about the 30th day of August, 1921, by C. B. Stebins, J. R. Albright and D. A. Eley, then the Trustees of Boston Township in said County, who as such Trustees prior thereto, had passed a resolution for the establishing of the aforesaid Metropolitan Park District under such style and name, which district was to include all of Summit County, excepting the Township of Twinsburg, that said application for its establishment was accompanied with a map or plat required by the statutes hereinafter mentioned. That on or about the first day of January, 1922, the Probate Judge of Summit County entered an order establishing the Akron Metropolitan Park District for Summit County, embracing all of the [fol. 31] territory thereof, excepting the Township of Twinsburg and Village of Hudson.

Plaintiff says that the Akron Metropolitan Park District is established under and by virtue of an act passed by the General Assembly of Ohio on March 6th, 1917, volume 107 Ohio Session Laws, page 65, and an act passed by said legislative body on April 9, 1919, volume 108 Ohio Session Laws, part 2, page 1097, and that the said Frank A. Seiberling, Edward D. Eckroad and Maude I. Milar, defendants, herein hold their respective positions as Commissioners of said Park District by virtue of the aforesaid legislation, which is embraced in sections 2976-1 to and including section 2976-10 I of the General Code of Ohio, which legislation is illegal and void, being special acts conferring corporate powers in violation of section one, article 13, of the Constitution of Ohio. That section 2976-4 G. C. confers upon and requires the Probate Judge of Summit County to determine whether the creation of the said Park District would conserve the public welfare and also empowers said Judge to determine the geographical boundary of said Park District, both of which called upon the said Judge to determine political questions instead of deciding judicial questions. That section 2976-5 G. C. confers upon the Probate Judge the right and duty to appoint three persons as Park Commissioners for the said Metropolitan Park District, when established, and which he did. That section 2976-7 G. C. declares that said Board of Park Commissioner shall be a body politic incorporate in violation of section 2, article 13, of the Constitution of Ohio.

[fol. 32] Plaintiff says the defendants, Park Board Commissioners, do not constitute, or represent, a Municipal Corporation, a Township, or a County recognization, or authorized under the Constitution and Laws of Ohio. That said legislation, herein complained of, confers upon said Park Board Commissioners power ex officio to destroy any Township or County political organization by simply acquiring all, or nearly all, the territory therein, which when acquired the real estate therein becomes non-taxable. That by section 2976-7 the Park Board Commissioners are empowered to acquire land outside of the park districts, as now established, and outside of the County of Summit, which the taxpayers in the said Metropolitan Park District are required to pay for. Plaintiff says that the said Park Board Commissioners do not constitute a political body, nor represent a political district, recognized or permitted by, or under, the laws of the Constitution of Ohio.

The plaintiff says that by the provisions of 2976-10 G. C. the defendant Park Commissioners have conferred upon them the absolute power to levy taxes within such park district in an amount not in excess of one-tenth (1/10) of one mill upon each dollar of the assessed value of the property in the aforesaid district, in any one year, subject, however, to the combined maximum levy for all other purposes, provided by law, which the county budget commission is to determine and then certify said facts to the county auditor, who is required by said section to place said tax upon the tax duplicate, and when certified said Park Commissioners may anticipate the collection of said taxes so levied, and are empowered to issue their negotiable notes, not in ex- [fol. 33] cess of 75% of the proceeds of such tax, which notes shall not be for a longer period than one (1) year.

Plaintiff says that by the provisions of 2976-10 B. G. C. the county auditor and county treasurer are made ex officio officers of said Park Board, and the auditor when required by said Park Board Commissioners is required to issue his warrants upon the county treasurer for the disbursement of funds derived from the taxes levied by said Park Board Commissioners. That section 2976-10 D empowers said Park Board Commissioners to have land annexed to said Park District, as now established, that lies in counties adjacent to Summit County, and that the county auditor and treasurer in said counties where land may be annexed

are made subject to the provisions of section 2976-3 and 2976-4 G. C. That section 2976-10 g G. C. delegates to said Park Board Commissioners power to pass such by-laws, rules or regulations, as they may deem it advisable for the preservation of good order within, and adjacent, to said Park District, which is unconstitutional, being a delegation of legislative power to a non-political body not recognized or permitted under the Constitution of Ohio, violating section one, Article 2, thereof. Plaintiff says that said legislation herein complained of confers upon the Probate Judge the right to appoint persons as members of said Park Board who are not required to be electors, or even citizens of the Park District under their control. That none of the defendant Park Board Commissioners have been elected, or are required to be elected, by said acts, and are not representatives of the taxpayers who are required to pay the taxes said legislation authorizes them to levy. All of which is contrary to and in violation of the [fol 34] fundamental law of the land; the Constitution of Ohio, and the Constitution of the United States, that taxation and representation are inseparable.

Plaintiff says that none of the electors or citizens of township, other than in Twinsburg Township, Summit County, can avail themselves of the right conferred by the Act of April 17, 1925, 111 Ohio Session Laws, 504, as said act cannot be given or have uniform operation throughout Summit County, by reason of the establishment of the aforesaid Park District, which violates section 26 of Article 2 of the Constitution of Ohio, and constitutes a denial of the equal protection or benefit of the laws guaranteed by section one of the 14th Amendment to the Constitution of the United States. That under provisions of section one, Article 2, of the Constitution of Ohio the General Assembly cannot delegate to non-elective bodies, or persons, the power to levy taxes, and that said legislation violates section 7, of Article 10, of the Constitution of Ohio. That by the provisions of said act, herein complained of, the county auditor and treasurer are made the ministerial officers or agents of the defendant Park Board Commissioners.

Plaintiff says the County Budget Commission for Summit County has, or is about to and will determine

that said Park Board Commissioners can and will, under the provisions of the said legislation and the statutes of Ohio, be entitled to levy on all property, in said Park District for the year 1927 about one eight hundredths of a mill of a tax, which will aggregate for said year about $40,000.00 and which levy the county auditor, Jacob Mong, [fol. 35] is about to, or has, placed upon the tax duplicate of said county for said year, and that the defendants, Park Board Commissioners, can, in anticipation of said taxes levied, issue notes of said Board as authorized by said legislation to secure funds for carrying on its activities, and which it will do as plaintiff alleges unless restrained and perpetually enjoined plaintiff says the defendants, Park Board Commissioners, have been issuing orders to auditor of Summit County for the payment of bills incurred by it, and that he has issued his warrants upon the county treasurer for said purpose and will continue to do so unless restrained and enjoined. Plaintiff says that he has no legal remedy of law to prevent the things herein complained of being done by the defendants under and by virtue of the aforesaid legislation, and appeals to the court of equity to prevent said act being done all of which are contrary to the aforesaid provisions of the Constitution and the fundamental law of the land.

Wherefore, Plaintiff asks the court upon the final hearing of this cause that the court find and declare the legislation hereinbefore mentioned to be illegal, unconstitutional and void. That defendants, Frank A. Seiberling, Edward D. Eckroad, and Maude I. Milar, be perpetually enjoined from exercising any of the powers conferred upon them by the legislation hereinbefore complained of and set forth in this petition, and that they be enjoined from levying any taxes upon property within the Akron Metropolitan Park District of Summit County, or issuing any further orders for the payment of obligations incurred by them upon the defendant's order, Jacob Mong, auditor, who is asked to be restrained and perpetually enjoined from issu- [fol. 36] ing any further warrants upon the county treasurer for the purpose of paying any obligations incurred by said Park Board Commissioners, and that he, as auditor, be

restrained and enjoined by placing upon the tax duplicate any taxes levied by said Park Board Commissioners for the year 1927, or any levied thereafter by said Park Board Commissioners, and that plaintiff be granted such other and further relief that the court of equity may find necessary and proper to prevent the illegal acts herein complained of.

Geo. D. Hile, Attorney for Plaintiff.

*Duly sworn to by E. H. Bryant. Jurat omitted in printing.*

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In Common Pleas Court of Summit County

Answer—Filed Jan. 25, 1927. Refiled March 2, 1927

Now come the defendants in the above entitled action and for a joint answer to the matters and things alleged in the petition admit as follows:

[fol. 37] 1. That plaintiff is a tax payer in Summit County as alleged in the petition.

2. That plaintiff made written demand on Walter Booth, prosecuting attorney of Summit County, to institute this action and that the said prosecuting attorney refused so to do, in writing.

3. That the defendant, Jacob Mong, is the duly elected and qualified auditor of Summit County, Ohio.

4. That the defendants, Frank A. Seiberling, Edward D. Eckroad and Maude I. Milar are the members of the Board of Commissioners of the Akron Metropolitan Park District of Summit County, Ohio.

5. That said The Akron Metropolitan Park District of Summit County, Ohio, was established on the application of the trustees of Boston Township pursuant to an application filed in the Probate Court of Summit County, Ohio, on or about August 30, 1921, and that the order establishing said The Akron Metropolitan Park District was entered on or about December 31, 1921, by the Probate Court of Summit County.

6. That said The Akron Metropolitan Park District embraces the whole of Summit County excepting the Township of Twinsburgh and Village of Hudson.

7. That said The Akron Metropolitan Park District was established under and by virtue of an act of the General Assembly passed March 6, 1917, found in Volume 107 Ohio Laws at Page 65, and an act passed on April 9, 1919, and found in Volume 108 Ohio Laws, Part 2nd, at page 1097.

8. That the Budget Commission of Summit County, Ohio, has determined upon a tax levy to be made, which levy will [fol. 38] be placed upon the tax duplicate by the defendant, Jacob Mong, County Auditor, and will be collected in due course and paid out by the County Treasurer, pursuant to certificates and authorizations in the form required by law.

Further answering, defendants say they have a joint and common interest in this action and therefore offer this answer in behalf of all of the defendants. The defendants deny the following allegations, to-wit:

1. The defendants deny each and all of the several allegations in the petition alleging that the enactments of the Legislature of the State of Ohio under which said The Akron Metropolitan Park Board was created and exists, are illegal, void or in contravention to any of the provisions contained in the Constitution of the State of Ohio.

2. Defendants deny each and all the several statements in the petition alleging that the enactments of the Legislature of the State of Ohio under which The Akron Metropolitan Park Board of Summit County was created or is operating, are in contravention of any of the provisions of the constitution of the United States.

3. Defendants deny that any of the enactments of the Legislature of the State of Ohio under which The Akron Metropolitan Park Board was created or is operating are in contravention to the fundamental law of the land.

4. Defendants deny each and every material allegation in the petition not herein admitted to be true and not herein qualified.

[fols. 39 & 40] Wherefore, having answered the matters and things alleged in the petition, defendants pray that the said petition may be dismissed and that they may be allowed to go hence and recover their costs herein made.

Myers & Dinsmore, Attorneys for The Akron Metropolitan Park District, Edward D. Eckroad, Maud I. Milar and Frank A. Seiberling. Oscar A. Hunsicker, Prosecuting Attorney, Attorney for Jacob Mong, County Auditor.

*Duly sworn to by Edward D. Eckroad and Jacob Mong. Jurats omitted in printing.*

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[fol. 41] IN SUPREME COURT OF OHIO

(Nos. 21324 and 21336—Decided March 27, 1929.)

THE STATE ex Rel. BRYANT

v.

AKRON METROPOLITAN PARK DISTRICT FOR SUMMIT COUNTY et al.

Error to the Court of Appeals of Summit County

THE STATE ex Rel. WADSWORTH, a Taxpayer,

v.

ZANGERLE, AUD., et al.

Error to the Court of Appeals of Cuyahoga County

Constitutional law—Park district act—Section 2976-1 et seq,. General Code—Constitutionality affirmed by two Judges of Supreme Court—Legislative powers not delegated to administrative bodies—Political and executive powers not delegated to judicial officers—Appointive officers may levy taxes.

The facts are stated in the opinion.

Mr. Geo. D. Hile and Messrs. Snyder, Henry, Thomsen, Ford & Seagrave, for plaintiffs in error.

Messrs. Myers & Dinsmore and Mr. O. A. Hunsicker, for defendants in error in No. 21324.

Mr. Edward C. Stanton, prosecuting attorney, Mr. E. J. Thobaben and Messrs. Locher, Green & Woods, for defendants in error in No. 21336.

[fol. 42] OPINION

MARSHALL, C. J.:

These two error proceedings, filed in this court as of right, involve the same or similar questions of constitutional law, and have therefore been argued together and will be disposed of in one opinion. Each was begun as a taxpayer's suit, attacking the constitutionality of the Park District Act, General Code Sections 2976-1 to 2976-10c, inclusive (107 O. L., 65-69), and the amendments thereto, Sections 2976-1 and 2976-7, and the supplemental Sections 2976-10d to 2976-10i (108 O. L., pt. 2, 1097-1100). Incidentally, the litigation in each instance involves questions of the lawful existence of the two metropolitan park boards organized under and pursuant to said statutes, in Cleveland and Akron, respectively.

In cause No. 21324, here on error from the Court of Appeals of Summit county, that court had affirmed the judgment for the defendants pronounced in the court of common pleas upon the pleadings, which joined issue upon the constitutional objections alleged by the taxpayer against said stautes. In cause No. 21336, here on error from the Court of Appeals of Cuyahoga county, that court heard the case on appeal from the court of common pleas of that county and rendered judgment for the defendants, with separate findings of fact and conclusions of law. In each case, the prayer of the petition was that the officers of the district park boards be enjoined from incurring obligations requiring the expenditure of public funds, or from exercising any of the powers conferred upon them by said statutes, and, more especially, that they be enjoined from levying any taxes upon property within the respective park districts, on the ground that all such statutes were unconstitutional and void.

[fol. 43] Section 2976-1, as amended, provides for park districts for the conservation of the natural resources of

the state, and further provides that such districts may include all, or a part only, of the territory within a county, if existing townships or municipalities are not divided.

Section 2976-2 provides that application may be made to the probate judge to create a park district, which application shall state the name of the district, contain accurate descriptions of the territory to be included, and be accompanied with an accurate map or plat.

Section 2976-3 provides for notice of the time of hearing such application.

Section 2976-4 provides for the hearing and taking evidence, as in other civil cases in said court and provides, that, if the judge finds that the creation of such district will be conducive to the general welfare, he shall enter an order creating the district under the name specified in the application.

Section 2976-5 provides that upon creation of such district the probate judge shall appoint three commissioners, who shall take oath and give bond, and who shall serve without compensation, except the allowance of actual and necessary expenses.

Section 2976-6 provides that such board shall be a body politic and corporate and shall be capable of suing and being sued.

Section 2976-7 confers upon such board power to acquire "lands either within or without such district for conversion into forest reserves and for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands, and to those ends may create parks, [fol. 44] parkways, forest reservations and other reservations and afforest, develop, improve and protect the same in such manner as they may deem conducive to the general welfare. Such lands may be acquired by such board, on behalf of said district, by gift or devise, by purchase, or by appropriation."

Section 2976-8 authorizes such park board to take control of any municipal park or park lands within the district by agreement with the authorities controlling the same.

Section 2976-9 provides: "In the development and improvement of the lands acquired by the board, such board may assess such portion of the cost of such development or improvement as it may deem equitable, not, however, in

excess of fifty per cent of such total cost, upon abutting, continguous, adjacent or otherwise specially benefited lands, in an amount not in excess of and in proportion to the special benefits conferred upon such lands by such development or improvement. Such assessments shall be payable in not to exceed ten equal annual installments, and said board may borrow money in anticipation of the collection of such special assessments, and the proceedings had in the levying and collection of such special assessments, including the issue of bonds of such district in anticipation of the collection of deferred assessments, shall be as provided in case of the levy and assessment of special assessments for street improvements in municipalities, in so far as such proceedings shall be applicable."

Section 2976-10 provides: "Such board shall have power to levy taxes upon all the taxable property within such district in an amount not in excess of one-tenth of one mill [fol. 45] upon each dollar of the assessed value of the property in the district in any one year, subject, however, to the combined maximum levy for all purposes otherwise provided by law. After the budget commission of the county in which said district is located shall certify such levy, or such modification thereof as they deem advisable to the county auditor, it shall be by him placed upon the tax duplicate, and the board may then borrow money in anticipation of the collection of such tax, and issue the negotiable notes of such board therefor in an amount not in excess of seventy-five per cent. of the proceeds of such tax, based upon the amount of the current tax duplicate. Such notes shall not be issued for a period longer than one year, and shall be payable out of the proceeds of such levy, and to the extent of such notes and the interest which may accrue thereon, such levy shall be exclusively appropriated to the payment of such notes, and shall be used for no other purpose whatsoever. Any portion of such notes remaining unpaid through any deficiency in such levy, shall be payable out of the next ensuing levy which shall be made by said board in the next ensuing year in an amount at least sufficient to provide for the payment of said notes, not, however, in excess of one-tenth of one mill."

Section 2976-10a provides for the disposition of records, surveys, and other property, including treasury balances required by laws superseded by these acts.

Section 2976-10b provides for the custody, accounting, depositing, and disbursement of park board funds, and requires the auditor's certificate of money in hand to pro- [fol. 46] vide for contracts before becoming effective.

Section 2976-10c provides for removal of commissioners at the discretion of the probate judge, either upon complaint filed or upon his own motion, and for the appointment of successors.

Section 2976-10d provides for annexation to a park district of territory adjacent and contiguous thereto, whether located within or without the county wherein such district was created.

Section 2976-10e provides, in case of annexation to a park district of territory located in a county other than a county in which such district was created, the budget commissioners of the county in which such annexed territory is located shall exercise, with reference to such annexed territory, the powers conferred upon budget commissioners by Section 2976-10, and the auditor and treasurer of the county in which such annexed territory is located shall exercise, with reference to taxes levied and collected by the park board upon such annexed territory, the powers conferred upon auditors and treasurers by Section 2976-10b.

Section 2976-10f provides that park boards may sell lands on approval by the probate judge.

Section 2976-10g gives to such boards power to adopt by-laws, rules, and regulations, and further provides that the violation of any such by-laws, rules, and regulations shall constitute a misdemeanor punishable by fines.

Section 2976-10h provides that such employes of the board as may be designated for that purpose shall have and exercise the powers of police officers within and adjacent to the lands under the jurisdiction and control of the board.

[fol. 47] Section 2976-10i provides: "Upon or before the first day of September in any year the board of park commissioners, by resolution, may submit to the electors of the district the question of levying taxes for the use of the district. Such resolution shall declare the necessity of levying such taxes, shall specify the purpose for which such taxes shall be used, the annual rate proposed, and the number of consecutive years such rate shall be levied; and such resolution shall be forthwith certified to the board

of deputy state supervisors and inspectors of elections in each county in which any part of such district is located, and the question of the levy of taxes as provided in such resolution shall be submitted to the electors of the district at the next ensuing general election. The ballot shall set forth the purpose for which said taxes shall be levied, the annual rate of levy, and the number of years of such levy. If a majority of the electors voting upon the question of such levy shall vote in favor thereof, such taxes shall be levied and shall be in addition to the taxes authorized by Section 2976-10 of the General Code, and all other taxes authorized by law; provided that the rate submitted to the electors at any one time shall not exceed one-tenth of one mill annually upon each dollar of valuation. When a tax levy shall have been authorized as herein provided, the board of park commissioners may issue bonds in anticipation of the collection of such levy, provided that such bonds shall be issued only for the purpose of acquiring and improving lands; and such levy, when collected, shall be applied in payment of the bonds so issued and the interest thereon; provided further that the amount of bonds so [fol. 48] issued and outstanding at any time shall not exceed one per cent of the total tax valuation in such district. Such bonds shall bear interest at a rate not to exceed six per cent per annum, shall be signed by a majority of the members of such park board, and shall be sold in the manner specified by law for the sale of municipal bonds, except that before advertising such bonds for sale at public sale, it shall be necessary only to offer said bonds for sale to the Industrial Commission of Ohio as provided by law."

While the petitions attack the constitutionality of Sections 2976-10g and 2976-10h, we shall give no consideration to those sections, because it does not appear that either of the boards involved in these error proceedings has ever attempted to enact by-laws, rules, and regulations, or to constitute any of their employees police officers, or to prosecute violators of said by-laws, rules, and regulations. The provisions particularly challenged and to which we shall direct our attention are Sections 2976-4, 2976-5, 2976-9, 2976-10, 2976-10c, 2976-10e, and 2976-10i.

There can be no question of the power of the General Assembly to establish park districts and boards of park

commissioners, and to define their powers. No one would question the right of the General Assembly to levy a state tax to establish and maintain state parks and reserves, and to appoint commissioners to care for them. This right has freely been exercised in the past. These are institutions in which all the people of the state are presumably interested and by which they are benefited. Cities have freely exercised these rights, and the state has likewise, though rather sparingly, exercised them. District parks and boards of park commissioners are institutions [fol. 49] which differ from state institutions only in the range of the interest and benefit. By the legislation now under consideraton provision has been made for park districts, whose benefits are more general than those of the cities and more local than those of the state. The power of the General Assembly to establish any of them is no longer doubted. This proceeding does not question the power of the Legislature to establish park districts. The attack is upon the methods by which they are established, and by which park boards are created, and upon the powers conferred on them. The case of McNab v. Board of Park Comm'rs, of Metropolitan Park Dist. in Cleveland, 108 Ohio St., 497, 141 N. E., 332, held that the statutes under which the Cleveland Park Board was established were enacted under the broad legislative power conferred upon the General Assembly and in the exercise of the state's general police power, and the only consideration given in that case to Section 36 of Article II of the Constitution, (the amendment of 1912), was to declare that that amendment did not operate as a limitation upon general legislative power. The discussion of the state's police power in the opinion in that case need not be further elaborated here. While the syllabus in that case was a sweeping declaration of the constitutionality of the statutes which are challenged in the instant case, it is proper to state that a different angle of attack is here made. This proceeding challenges the constitutionality of the various statutes because of alleged delegation of legislative powers to executive bodies, and alleged delegation of political and executive powers to judicial bodies. The first challenge we shall notice is di- [fol. 50] rected to the power conferred upon the probate judge to appoint park commissioners and to exercise the functions of molding the confines of the area affected and

erecting the same into a park district. It is alleged that the appointing power is an executive function, and the establishment of the confines of the district a legislative function, and that both are nonjudicial.

The Constitution of Ohio has delegated to the General Assembly the legislative authority of this state. This authority is only subject to the express limitations found in the Constitution itself and the implied limitation that it must fall within the scope of legislative authority, as distinguished from judicial and executive authority conferred upon other departments. Except for the provisions relating to the initiative and referendum, all legislative authority of the state must be exercised by the General Assembly alone.

The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others. It was declared by Madison before the adoption of the United States Constitution: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." To provide a practical security for each against the inva- [fol. 51] sion of the others was felt by the early founders of our government to be a most important, as well as a most difficult task. The State Constitutions of many of the states, adopted immediately after the federal Constitution went into effect, declared in strong terms that the powers of government ought to be forever separate and distinct from each other, and yet not one of them faithfully observed its own solemn injunctions, but made provision for certain powers to be exercised by departments other than those to which they properly belonged. Other states, including Ohio, and the federal government, made no such declaration, and while the powers have in fact been assigned to the three departments, no barriers have been provided between them, and no injunction declared against invasions or surrenders.

Our own Constitution contains many instances of conferring powers upon departments foreign to their true classification. The Constitution of 1802 provided for judges to be chosen by the Legislature. Our present Constitution gives to the Governor the veto power. The Lieutenant Governor presides over the Senate. The House of Representatives has the sole power of impeachment, and impeachments must be tried by the Senate. The Governor may convene the General Assembly in extraordinary session and limit the deliberations of such session. In case of disagreement between the two houses, he may adjourn them. The executive prerogative of pardon is in cases of treason reserved to the General Assembly. These major instances, and others of a minor nature which might be mentioned, illustrate and demonstrate the mixture of powers which is not only tolerated, but expressly author-[fol. 52] ized. It was the purpose of the founders of our federal and state Constitutions to so balance the division of powers that each department would possess the constitutional means of resisting encroachments of the others, and, at the same time, to so divide and arrange the offices that each might be a check on the others.

In the instant case it is not complained that one department is attempting an invasion of the prerogative of another, but that the Legislature is voluntarily surrendering a part of its prerogative to the judiciary, and conferring both legislative and executive powers upon the judicial branch. It cannot be doubted that the Legislature may define the jurisdiction of the probate court; nor is it claimed that it may not. This is placed beyond argument by the clear language of Section 8 of Article IV of the Constitution. It is claimed, however, that the probate court is clothed with authority to determine the extent of the territory to be created into a park district and that this is a purely political question. Sections 2976-2 to 2976-5, inclusive, define the powers and procedure of the court. Application must be made, notice given, and a hearing had. Section 2976-4 provides:

"At such hearing evidence may be taken as in other civil cases in said court, and the judge shall hear all arguments for and against the creation of such district. If he shall find that such application is signed, or authorized, as herein provided, and that the creation of such district will be con-

ducive to the general welfare, he shall enter an order creating the district under the name specified in the application."

[fol. 53] It is manifest, therefore, that the function of the court is in every sense judicial. It involves fact finding, and application of statutory principles and policies to the facts found. It is true that the policy of establishing parks and conserving natural resources is a purely political and therefore a legislative matter, but the question of existence of natural resources in any proposed district, and the further question of reasonable relation of proposed parks and natural resources to the general welfare, are justiciable matters.

It is further asserted that Section 2976-5, conferring upon the probate court power to appoint the commissioners, is unconstitutional because it confers an executive function upon the court. We have already seen that the Constitution places no barrier between the departments and there is no definite limitation of the general legislative authority which forbids giving to courts the power of appointment. On the other hand, there is very definite delegation of express power in that behalf. Section 27 of Article II provides:

"The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this Constitution, or the Constitution of the United States, shall be made in such manner as may be directed by law. * * *."

The office of park commissioner is, of course, not provided for by the Constitution, and therefore becomes subject to legislative action. The Legislature has acted pursuant to this authority many times. The appointing power has been conferred upon the court of common pleas in the following instances: Sections 5868 and 5869, to ap-[fol. 54] point and license auctioneers and to determine the amount of the license, not in excess of $500; Section 2976-11, to appoint county library trustees; Section 2710, to appoint examiners of the county treasury; Section 5947, to license ferries; Section 2333, to appoint county building commissions; Section 15098, as amended 109 Ohio Laws, 354, to appoint trustees of the Cincinnati Southern Railway; by the Conservancy Act (104 Ohio Laws, 13; Section 6828-8, General Code), to appoint directors of conservancy districts.

The power of appointment has been conferred upon the probate courts in the following instances: Section 2971, to

appoint a board of county visitors; Section 2397, to appoint, in conjunction with the county auditor and county recorder, a county commissioner; Section 2579, to examine as to grounds of removal of the county auditor; Section 2714, in conjunction with county treasurer and county auditor, to determine the necessity for a night watchman for the treasury and to fix his compensation; Section 1662, to appoint probation officers; Section 2348, to participate in the approval of plans for a courthouse or jail; Section 1713, to add one or more justices of the peace to any township.

If this court should hold at this time that the probate court does not have power to make appointments, and that the Legislature has no authority to confer such power upon the probate court, we would by the same token hold all of these statutes to be unconstitutional and void. We have no difficulty in declaring that, by virtue of Section 27 of Article II of the Constitution, the Legislature has authority to confer the appointing power upon courts, the jurisdic-[fol. 55] tion of which is under the authority and control of the Legislature, and this, of course, includes probate and common pleas courts.

The second challenge we shall notice is directed to the power conferred upon the board of park commissioners to levy taxes upon the taxable property within the district, not exceeding one-tenth of a mill in any one year. It is claimed that this is an attempted delegation of legislative power, vested exclusively, by Section 1 of Article II of the Constitution, in the General Assembly. It is a maxim in constitutional law that power conferred by a Constitution upon a Legislature to make laws cannot be delegated by such body to any other body or authority, unless the authority to so delegate is given by the Constitution itself, either expressly or by implication. The legislative prerogative is one which involves judgment, wisdom, and discretion of a high order, and the trust thus imposed cannot be shifted to other shoulders; neither can the judgment and discretion of any other body be substituted for that of the Legislature itself.

This principle is well settled and is no longer the subject of controversy. Its application is one of the greatest difficulty in certain classes of cases, more especially in legislation involving the exercise of the police power.

In the complexity of our advancing civilization, in the wide differences in conditions in different localities in the same state, and in the ever-changing conditions in a given locality, the Legislature has found it necessary to content itself with declaring the principles governing a general public purpose, and to confer upon existing local officials, [fol. 56] or upon local boards to be created in a designated manner, the authority to provide, within definite limitations, rules and regulations to execute the general purpose expressed in the law itself. It does not argue against the completeness of the law that a given locality or district may or may not at its option avail itself of the provisions of the law. Statutes are sometimes peremptory and mandatory, and sometimes optional and permissive. One locality may have no need of governmental activity along a given line, while another locality in the same state may have an urgent need. That need must be ascertained and declared by means and methods prescribed by the law itself, which must be scrupulously followed. While the Legislature may not delegate to any other power the right to declare principles and standards, or general public policy, it may delegate to other competent agencies the power to determine whether or not they will avail themselves of the privileges conferred, and also delegate to certain named executive or administrative agencies authority involving discretion in relation to the execution of the law.

The Legislature having declared the governmental policy, and having fixed the legal principles which are to govern, an administrative agency may be given power to ascertain the facts and conditions to which the policies and principles apply.

The creation of boards and commissions has become a familiar means in recent periods to perform the executive functions which are essential to the administration of laws. Parks and reservoirs for conservation of natural resources are for the public welfare, and the general policy of creating [fol. 57] them, and the methods of doing so, are subject-matters of legislation. It is axiomatic that they cannot be created or maintained without the expenditure of money. Not being in that class or character of public improvement where assessments can be made upon property in the vicinity by reason of special benefits, that method of providing funds is not available. Manifestly a levy of taxes

upon all the property in the state cannot be made to create and maintain a district park. It is inevitable, therefore, that a district levy must be made, and the Legislature has in fact authorized district park boards to impose a levy not in excess of one-tenth of one mill upon the assessed value of all taxable property in the district, subject to the maximum levy for all purposes provided by law.

Applying the principles already declared, the Legislature has determined the general policy and defined the methods by which local needs can be determined by orderly processes. As a part of such methods and processes it has conferred upon the district board the power to determine the financial needs of the district and to make levies of taxes to meet them. We are concerned with the constitutionality of the power thus delegated.

The power of the state to levy and collect taxes for public purposes is indispensable to orderly government, and is inherent in sovereignty. No government could discharge its functions without funds, and funds can only be raised by the imposition of taxes. The exercise of the power of imposing and collecting taxes is legislative, and yet this power is not expressly conferred by our Constitution upon [fol. 58] the General Assembly. It is, however, necessarily included in the legislative authority conferred upon the General Assembly by Section 1 of Article II of the Constitution. Except for other express and implied provisions in the Constitution, the power of taxation would be vested in the Legislature alone, and without interference on the part of other governmental agencies. When these express and implied powers have been ascertained, the problems of the instant case will have been solved. The following provisions of the Constitution are pertinent to the inquiry:

Article VI, Section 2: "The General Assembly shall make such provisions by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state."

Article X, Section 7: "The commissioners of counties, the trustees of townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law."

Article XII, Section 5: "No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall

state, distinctly, the object of the same, to which only, it shall be applied."

Article XIII, Section 6: "The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

Cities and villages in Ohio have in fact been organized under general laws, and the Legislature has in fact enacted statutes relative to the levy and collection of taxes by muni- [fol. 59] cipal corporations, which provisions are found in Sections 5625-3 and 3785, General Code. In harmony with the provisions of Section 6 of Article XIII of the Constitution, the provisions of the statute are in the nature of restrictions, thereby carrying out the constitutional mandate. By the provisions of Section 2 of Article VI of the Constitution the General Assembly was required to establish a thorough and efficient system of common schools throughout the state, and again there was the necessary implication that those local agencies in charge of the schools should have the power to impose and collect taxes. Counties and townships had been established as political subdivisions long before the adoption of the Constitution of 1851, and the same political necessity required the adoption of Section 7 of Article X, giving power of local taxation for police purposes to such subdivisions, but nevertheless requiring that such power should be only such "as may be prescribed by law."

All of these governmental agencies being local in their nature, it would have been impracticable, not to say impossible, for the General Assembly to have determined the amounts necessary to be provided by taxation; but, aside from that fact, the general policy of local control of local institutions has been a settled one in the genius of American government from its very foundation. The power of taxation is therefore a sovereign power and a legislative power, but the exercise of that power calls for certain administrative functions as indispensable to a wise and economical administration of public affairs. It is therefore the province of the General Assembly to determine the general governmental policy and the maximum of the

[fol. 60] extent of the imposition and collection of taxes for all purposes in the state; but it is the province of the local subdivisions to determine their local needs, and to distribute the parts composing that maximum among the several institutions to be created and maintained. All of these principles have been well settled, and, while numerous authorities might be cited in their support, it is only necessary to refer to a few leading cases: *Hill* v. *Higdon*, 5 Ohio St., 243, 250, 67 Am. Dec. 289; *Western Union Tel. Co.* v. *Mayer, Treas.*, 28 Ohio St., 521, 533; *City of Cincinnati* v. *Roettinger*, 105 Ohio St., 145, 154, 137 N. E., 6.

If park districts fell clearly within the political subdivisions referred to in the Constitution, the foregoing principles would be decisive of this controversy. It is claimed, however, by relators, that several differences distinguish them. It is claimed that, by reason of the fact that in all those political subdivisions particularly referred to in the Constitution public officers are elected by vote of the people, it necessarily follows that taxes can only be levied by local authorities where the local officials are elected by the vote of the people. We are not, however, able to find any provision in the Constitution which limits the power to levy taxes to elected officials, as distinguished from those who are appointed to office. We are unable to find that the Constitution makes any distinction between officers elected and officers appointed, so far as the powers to be conferred upon them are concerned. The Constitution does provide, in Sections 2 and 4 of Article X, that all township and county officers must be elected, but Section 27 of Article II provides that all officers not provided for by the Constitu-[fol. 61] tion may be either elected or appointed, as the Legislature may direct. Taxes could only be imposed and collected for the use of townships and counties by officers who are elected by the people, for the simple reason that townships and counties can only choose their officials by election. It does not follow that, if any other political subdivisions are created in a lawful way, the officers who would govern such political subdivisions might not hold their offices by appointment, under the provisions of Section 27 of Article II. Neither does it follow that such officers could not be charged with the duty and responsibility of levying the taxes necessary to carry on the functions of such subdivisions.

To reach this conclusion it is not necessary to resort to implication. In the same section which makes provision for the power of local taxation for townships and counties, we find that that power has been conferred upon "similar boards;" that is to say, boards which are similar as governmental agencies to trustees of townships and commissioners of counties. They would necessarily not be boards which would have their territorial jurisdiction identical with a township or a county, because this would necessarily constitute them either township or county officers. In such event, it would have been necessary that they be elected by a vote of the people, and there would be no problem to be solved. The Constitution framers must have had some particular agency in mind, and we can conceive of no agencies which would have been pertinent to the language used except boards which would have jurisdiction over some territorial district not identical with a township or a county. [fol. 62] Adopting this view of the matter, we are not without abundant authority to support the conclusions we have reached.

Park boards are strictly creatures of legislation. But this fact does not distinguish them from townships and counties, which are likewise creatures of legislation. It was clearly and emphatically so stated by Judge Ranney in Cincinnati, W. & Z. Rd. Co. v. Commrs. of Clinton County, 1 Ohio St., 77, at page 89 of the opinion:

"But what is a county? It is not imperium in imperio, in any sense. It is invested, as such, with no single attribute of sovereignty; and for reasons already stated, it cannot be. Rightly considered, it is a mere instrumentality, a means in the hands of the legislative power to accomplish its lawful purposes; and to this extent, a creature in the hands of its creator, subject to be molded and fashioned as the ever varying exigencies of the state may require."

Much more appears in that opinion of the same tenor. This language, coming as it does from Judge Ranney, who was the leading figure in the constitutional convention of 1851, becomes authority of unusual force. In the same opinion he quotes with approval from Rice v. Foster, 4 Har. (Del.), 479, 495, as follows:

"Legislative power is the power of making laws. The making of a law, prescribing by what persons, or by what

body, when, and in what manner taxes should be laid and collected, is the exercise of a legislative power. But the making of a resolution, or order, or the determination or direction by the persons or body appointed for such purpose [fol. 63] by the law, that taxes shall be laid and collected, is simply the execution of an authority granted by statute."

In the same opinion he quotes with approval from Parker v. Commonwealth, 6 Pa., 507, 47 Am. Dec., 480:

"A law designating the persons, or bodies of persons, by whom a tax may be imposed, and the mode in which it shall be collected and distributed, requires the authority of the constitutional law maker, for it is a rule of action prescribed. But the act of the designated persons or bodies, depends, for its authority, altogether upon the law commanding or permitting it."

Surely the Legislature has the same power to create districts as it has to create townships and counties. Judge Ranney's definition of a county has no point of difference as an instrumentality of government from the districts created by the acts now under consideration. We could not uphold the contentions of the relators in these cases without doing violence to the principle declared by this court in Miami County v. City of Dayton, 92 Ohio St., 215, 110 N. E., 726.

It is true that the Conservancy Act has many essential differences from the Park District Act, and it is true that under the Conservancy Act provision is made for assessments upon lands in the vicinity to defray the cost of the improvement, and it is true that in that case the court treated all levies of taxes as special assessments. The Conservancy Act does make provision for special assessments and it seems to us that it has also clearly made provision for levy of general taxes without regard to special benefits. [fol. 64] Section 43 of the act (Section 6828-43, General Code), contains the following povision:

"As soon as any district shall have been organized under this act, and a board of directors shall have been appointed and qualified, such board of directors shall have the power and authority to levy upon the property of the district not to exceed three-tenths of a mill on the assessed valuation

thereof as a level rate to be used for the purpose of paying expenses of organization, for surveys and plans, and for other incidental expenses which may be necessary up to the time money is received from the sale of bonds or otherwise."

The "assessed valuation thereof" must necessarily refer to the value of property assessed for purposes of general taxation, and cannot possibly refer to the "appraisal of benefits" referred to in other portions of the act. We agree with the conclusions reached by the court in that case, but in order to do so do not find it necessary to make any distinction between the power to levy general taxes and the power to levy special assessments. The Miami conservancy case was before this court a number of times, and every feature of the Conservancy Act was brought in question in those various proceedings, and all were found to be valid and constitutional. The same principle must necessarily apply to the Park Board Act, and those principles which have become a rule of property in conservancy cases cannot upon any equitable principle be denied application to cases arising under the Park Board Act.

In State, ex rel. Village of Cuyahoga Heights, v. Zangerle, 103 Ohio St., 566, 134 N. E., 686, this court had under [fol. 65] consideration the Health District Law, 108 Ohio Laws, pt. 2, 1085 (Section 1261-16 et seq., General Code). That law provided for local health districts and general health districts. The general health district was not identical in territory with any other political subdivison of the state. The law did definitely provide for a levy of taxes to carry on the health activities of the district, but it did provide in Section 1261-40 that the board of health of a general health district should estimate the amounts needed for the current expenses of the district and submit the same to the budget commissioners, and further provided: "The aggregate amount as fixed by the budget commissioners shall be apportioned by the county auditor among the townships and municipalities composing the health district on the basis of taxable valutions in such townships and municipalities." The section further provided that the required amount should be withheld by the several auditors of the counties of the district, and the results were therefore the same as though the tax had been directly levied by the

board, the auditor having no alternative except to withhold the amount requested and place the same in the "district health fund."

In State, ex rel. Fritz, v. Gongwer, 114 Ohio St., 642, 151 N. E., 752, this court had under consideration the District Ditch Law. (Sections 6536 to 6542, inclusive, General Code.) That law did not permit of a levy of general taxes, but made provision for special assessments. The assessments were made by elective officers, viz., the commissioners of the counties, the whole or parts of which composed the taxing district. It was held in that case that the law was [fol. 66] constitutional, and it was particularly stated that the county commissioners, while acting under that law, were not acting as county commissioners, but as officers of the entire territory composing the taxing district. While no provision was made in that law for a direct levy of general taxes, it did permit the pledging of the faith and credit of the special taxing district as security for bonds to be issued, and it necessarily follows that, if there were at any time default in any bond issued by any such district, and a liability thereon which could not be met by the special assessments, the residue would have to be met by a general levy of taxes on all of the property within the district. That decision is therefore authority for the doctrine that a levy of general taxes may be made by district officers who hold their offices ex officio, and therefore by appointment.

Counsel for relators interpret the Miami and Gongwer cases as giving to appointive officers only the power to levy special assessments. Even if we should adopt that limited interpretation of those cases, they would still be authority for the proposition that appointive officers might be empowered to levy general taxes, because we find nothing in the Constitution which places special assessments upon a different basis from general taxes. The Constitution provided that certain officials must be elected by vote of the people, and then provides that other officers than those named may be either elected or appointed. It does not follow that the duties and responsibilities of the one are less important than those of the other. The case of Cline v. Martin, 94 Ohio St., 420, 115 N. E., 37, has many points in common with the instant controversy. That case was [fols. 67 & 68] heard at a time when the members of the county school board were appointive. At that time the

provisions for obtaining funds to carry on the work of the county board were much the same as the provisions of the general district health law, which has already been adverted to.

State, ex rel. Atty. Gen., v. Covington, 29 Ohio St., 102; State v. Baugham, 38 Ohio St., 455, and State ex rel. Herron v. Smith, 44 Ohio St., 348, 7 N. E. 447, 12 N. E., 829, each and all present analogies to the instant case, as showing the exercise of the functions of levying taxes by persons and boards holding office by appointment and the approval of such exercise by this court. It is true that in all of those cases counsel did not argue the points which have been so strongly presented in the instant case, but upon thorough inquiry into the subject we are of the opinion that the Constitution has fully authorized the Legislature to create districts, as separate political subdivisions, and to create boards to exercise the governmental activities of the district, and to utilize such boards as fact-finding agencies, and to determine the financial needs of such districts, and to impose and collect taxes to defray the same.

A minority of the members of this court finds no conflict in the District Park Board Act with any of the provisions of the Constitution. The act was held to be valid and constitutional by the Court of Appeals, and a minority of this court is therefore under the necessity of affirming that judgment, since the Constitution requires the concurrence of all but one of the judges of this court to hold it to be unconstitutional. The judgment in each case is affirmed.

Judgments affirmed.

Kinkade J., concurs.

[fol. 69] [File endorsement omitted.]

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[fol. 70] IN SUPREME COURT OF OHIO

[Titled omitted.]

MOTION TO VACATE JUDGMENT AND FOR JUDGMENT FOR PLAINTIFF IN ERROR—Filed May 25, 1929

Now comes E. H. Bryant, a taxpayer of Summit County, Ohio, plaintiff in error, and respectfully moves the court to enter an order vacating and holding for naught the

judgment heretofore entered upon the journal of this court affirming the judgment of the Court of Appeals of Summit County in this cause, and to enter in lieu thereof a judgment of this court in this cause, reversing the judgment of the Court of Appeals of Summit County, Ohio, rendered herein and remanding this cause to the Common Pleas Court of Summit County for further proceedings according to law, or enter an order vacating and holding for naught the judgment of this court heretofore rendered on the journal of this court affirming the judgment of the Court of Appeals of Summit County in this cause, and entering a judgment in this cause in favor of the plaintiff in error in accordance with and as prayed for in his amended petition. [fol. 71] And for the grounds upon which this motion is based the plaintiff in error represents to the court that he began this action as a taxpayer in the Common Pleas Court of Summit County against the defendants in error, seeking equitable relief, and otherwise, in a petition predicated on the grounds that Sec. 2976-1 et seq. G. C., as being in violation of the Constitution of Ohio, the Constitution of the United States, and that certain sections of said Park District Act violate certain provisions of the said Constitutions, and all of which are specifically pointed out in his amended petition; that defendants in error filed an answer to plaintiff's amended petition constituting an admission of facts requiring no evidence; that said cause was heard by the Common Pleas Court which thereafter entered an order dismissing plaintiff's amended petition and entering judgment in favor of the defendants in error.

That thereupon plaintiff in error prosecuted error proceedings to the Court of Appeals of Summit County, which court entered a judgment affirming the judgment of the Common Pleas Court.

Whereupon, plaintiff in error filed a petition of right in this court, and, after the submission of briefs and two arguments, this court on March 27, 1929, affirmed the judgment of the Court of Appeals of Summit County holding the Park District Act constitutional. This was accomplished by the concurrence of two members of this court holding that the Park District Act is constitutional, while five members of this court refused to concur with the two members so holding, hold that the Park District Act is unconstitutional.

Plaintiff in error states that this court, like the lower court, failed to pass upon the constitutionality of Secs. 2926-10 and 2926-10h, G. C., or determine whether said [fol. 72] Park District Act violates the Federal Constitution of any of its provisions, and fails to state on its journal entry that no Federal question is presented, deciding or involved in this controversy. This action of the court in affirming the judgment of the Court of Appeals in this cause upon the vote of but two of its members, and notwithstanding that five of its members constitute a majority of the entire court, found the Park District Act was unconstitutional, is predicated upon that part of Section 2 of Article 4 of the Constitution which is as follows:

"No law shall be held unconstitutional and void by the Supreme Court without a concurrence of at least all but one of the judges, except in the affirmance of the judgment of a court of appeals declaring a law unconstitutional and void."

The plaintiff in error believes and respectfully prays the court to grant this motion for the reversal of the judgment of the Court of Appeals in this cause for the following reasons:

(1) The provision above set forth and contained in Section 2 of Article 4 of the Constitution of Ohio is inconsistent and in direct and irreconcilable conflict with that portion of the same section, i. e., Section 2 of Article 4 of the Constitution of Ohio, which provides:

"It (the Supreme Court) shall have original jurisdiction in quo warranty, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the Constitution of the United States or of this state * * *;"

that the language last quoted is paramount and controlling over the language first quoted herein, rendering the provision first quoted invalid and unenforceable.

(2) The portion of Section 2 of Article 4, providing as follows:

"No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all *all*

[fols. 73 & 74] but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

is invalid and in conflict with the Constitution of the United States and the following language used therein in Article 1, Section 14, known as the Fourteenth Amendment, as follows:

"Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;"

the provision in the Ohio Constitution contained, just hereinbefore set forth, does deny to citizens of Ohio due process of law, and does likewise deny to them the equal protection of the laws.

(3) The provision in the Constitution of Ohio contained, just hereinbefore set forth, is void and invalid as being repugnant to the letter and spirit of the Constitution of the State of Ohio, and likewise the Constitution of the United States in so far as they require and provide for each State having a republican form of government wherein the will of the majority shall prevail.

George D. Hile and Snyder, Henry, Thomsen, Ford & Seagrave. By Frederick A. Henry, Attorney for Plaintiff in Error.

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[fol. 75] In Supreme Court of the United States

Statement of Points to be Relied on by Appellant and Designation of Parts of Record to be Printed—Filed July 26, 1929

The appellant, State of Ohio, ex rel. E. H. Bryant, files the following statement of points to be relied upon:

Point One

The Park District Act (General Code of Ohio, Sections 2976-4 et seq.) was held by the Common Pleas Court and the Court of Appeals of that state not to violate either the

Constitution of the United States or that of Ohio; but on error to the Supreme Court of Ohio only two of the judges were of that opinion and five of the judges were of the opinion that said statute is unconstitutional and void; nevertheless an order of affirmance was entered because of the provision of Article IV, Section 2 of the Constitution of Ohio, that "No law shall be held unconstitutional and void by the Supreme Court without a concurrence of at least all but one of the judges, except in the affirmance of the judgment of a court of appeals declaring a law unconstitutional and void"; and on motion to vacate this judgment and substitute a judgment of reversal pursuant to the opinion of the majority of the judges on the ground that this constitutional limitation does not operate where the statute in question is claimed to be contrary to the Constitution of the United States, inasmuch as by Article IV of that instrument it is declared to be "the supreme law of the land" and that "the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding," the Supreme Court of Ohio erred in refusing so to do.

[fol. 76] Point Two

This peculiarity in the judicial structure of the Supreme Court of Ohio as illustrated in Board of Education v. Columbus, 118 O. S. 295, 296, 306 and especially 298, may make a statute of the state valid in some parts of the state and invalid in other parts,—not because such is the asserted will of the legislature in enacting such statute, nor because the act, though general in form, is in the nature of the case confined in its operation to a limited area or to a definable class of persons or things,—but soley from the lottery of discordant, inferior court decisions on a particular constitutional question which the state Supreme Court has express jurisdiction to review and yet can not bring into accord because whenever two of the seven judges hold such statute to be valid, the judgments of all the different courts of appeals throughout the state, whether pro or con, upon this question may be affirmed; and this necessarily denies the litigants the equal protection of the laws as guaranteed by Section 1 of the Fourteenth Amendment of the Federal Constitution and by Section 4 of Article IV

of the same instrument which assures to each state a republican form of government. Truax v. Corrigan, 257 U. S. 312; People v. Western Union Telegraph Co., 70 Colo. 90; White v. Hart, 13 Wall. 646; Gunn v. Berry, 15 Wall. 610.

Point Three

On the merits of the constitutionality of the Park Board Act the judgment of the Supreme Court of Ohio denies the appellant the equal protection of the laws guaranteed by Section 1 of the Fourteenth Amendment in the unequal operation of the Act in subjecting the taxpayers within the district to the financial burden of acquiring and maintaining park lands outside of it; and furthermore denies the appellant the equal protection of the laws, and due process of law under said amendment and the benefit of the republican form of government guaranteed to each state by Section 4 of Article IV in delegating to non elective park commissioners the legislative powers of levying taxes, defining misdemeanors, appointing police officers with power to arrest, and expending tax revenues for such purposes. [fols. 77 & 78] Michigan Central Railroad Co. v. Powers, 201 U. S. 245, 294; Parks v. Board of Commissioners of Wyandotte County, 61 Fed. 436.

George D. Hile and Snyder, Henry, Thomsen, Ford & Seagrave. By Frederick A. Henry, Attorney and of Counsel for Appellant.

[fol. 79] Designation of Parts of Record to be Printed

The appellant hereby designates the parts of the record herein to be printed under the supervision of the Clerk of this court, namely:

1. Amended petition filed in Common Pleas Court of Summit County, February 17, 1927.
2. Answer filed January 25, 1927; refiled March 2, 1927.
3. Transcript of docket and journal entries in the Court of Common Pleas of Summit County, Ohio.
4. Petition in error filed in the Court of Appeals of Summit County, October 14, 1927.
5. Transcript of docket and journal entries in the Court of Appeals of Summit County.

6. Petition in error filed in the Supreme Court of Ohio, August 2, 1928.
7. Opinion of Chief Justice Marshall of the Supreme Court of Ohio accompanying its decision of March 27, 1929.
8. Motion to vacate judgment and for judgment for plaintiff in error, etc., (not including brief supporting motion).
9. Transcript of docket and journal entries of the Supreme Court of Ohio.
10. Petition for appeal and allowance thereof.
11. Assignment of errors and allowance thereof.
12. Citation and proof of service thereof on appellees.

[fols. 80 & 81] The following parts of the record may be omitted from the printing:

Bond and approval thereof.

Precipe to the Clerk of the Supreme Court of Ohio for transcript to be certified to the Supreme Court of the United States, together with proof or acknowledgment of service of a copy on the appellees, etc.

George D. Hile and Snyder, Henry, Thomsen, Ford & Seagrave. By Frederick A. Henry, Attorneys and of Counsel for Appellant.

[fol. 82] [File endorsement omitted.]

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Endorsed on cover: File No. 34,368. Ohio Supreme Court. Term No. 237, State of Ohio ex rel. E. H. Bryant, Appellant, vs. Akron Metropolitan Park District for Summit County, F. A. Seiberling, et al. Filed July 12, 1929. File No. 34,368.